



Massachusetts
Department
of
ENVIRONMENTAL
PROTECTION

M C P Q & A

October 2004

Notification

Q. 1. Would the recurrence of LNAPL greater than ½-inch trigger a new 72-hour release notification at a disposal site where an IRA was previously completed to remove LNAPL?

A. This would NOT be a new notification condition if: 1) this is the same LNAPL as previously addressed at the site, and 2) exposures/risks associated with this LNAPL have not changed. The standard of proof in the MCP for decisions of this nature is "more likely than not". The reporting exemption at 310 CMR 40.0317(16) for 72-hour and 120-day release conditions does not require notification when a response action for that release was previously undertaken in compliance with the MCP and the OHM observed at the site is consistent with the nature, and types and quantities of OHM for which the previous release notification was made. All pertinent information on the releases, including past data, the efficacy of earlier remedial measures, the location of potential sources, and groundwater flow and preferential pathways, should be evaluated within 72-hours of observing the LNAPL to determine whether a new notification requirement exists. Where there is uncertainty as to whether the standard for notification has been met, parties may want to consider notifying DEP within the specified timeframe, knowing that they may subsequently retract the notification within 60 days (310 CMR 40.0335).

Note that it is not necessary to eliminate a 2/72-hour reporting condition to close out an IRA (see 310 CMR 40.0427(1)), but only to eliminate Imminent Hazards, stabilize site conditions, and address CEP conditions.

Q. 2. If a URAM Notification Form (BWSC119) is submitted to remove contaminated soil during a utility repair, does a standard RNF (Form BWSC103) also need to be submitted?

A. An RNF must be submitted ONLY in those situations where the person conducting the URAM is also a party listed at 310 CMR 40.0331.

In accordance with 310 CMR 40.0462(2), "Persons providing oral notification to DEP pursuant to 310 CMR 40.0462(1) shall submit written confirmation of such notice to DEP within seven days, using a transmittal form established by DEP for such purposes. Such confirmation shall include submittal of an RNF as described in 310 CMR 40.0371, in cases where the person conducting the Utility-related Abatement Measure is also a person required to notify pursuant to the provisions of 310 CMR 40.0331." Although this section references oral

notification procedures, the criteria on when an RNF must be submitted is germane to all URAM situations.

Q. 3. Does the submittal of a URAM notification without an RNF result in the assignment of an RTN to the location by DEP if levels above the Reportable Concentration may still exist in adjacent soil or groundwater outside a URAM project area?

A. In cases where the person conducting the URAM is not a person listed at 40.0331, and where an RNF is not submitted to DEP, the agency may associate the URAM condition with an existing disposal site (such as an adjacent gasoline service station), or seek to identify the source of the contamination and ensure that responsible parties undertake needed MCP response actions. The issuance of a RTN may or may not occur in such a situation. In any event, the party conducting the URAM would not be expected to conduct needed additional response actions, unless they are a party with statutory liability to do so in accordance with MGL c.21E s.5A.

Q. 4. Are there situations where notification is not required, but response actions must still be conducted?

A. Yes. Where notification is not required, a response action would still be required "outside the MCP process" if the conditions constitute a Release as that term is defined in MGL Chapter 21E and pose significant risk to health, safety, public welfare or the environment (see 310 CMR 40.0370(1)). For example, a spill less than the Reportable Quantity that posed a significant risk must be cleaned up. Unless DEP specifies otherwise (through a Notice of Responsibility), those undertaking response actions where no notification is required are not subject to the submittal requirements, approvals, or fees specified in the MCP and fee regulations (310 CMR 40.0370(2)).

Q. 5. When does the MCP require parties to notify DEP of a release to the interior of a building?

A. In accordance with the provisions of 310 CMR 40.0317(19), releases to the interior of a building, including releases from the rupture or overflow of a free-standing fuel oil storage tank, are exempt from the notification requirements set forth in 310 CMR 40.0300 if such releases are "completely contained within the building". In this context, for the purposes of reporting "2 hour" spill events per 310 CMR 40.0311, "completely contained within the building" shall be satisfied if a preponderance of the evidence indicates that less than the Reportable Quantity (e.g., 10 gallons for fuel oil) reached environmental media from within the building (e.g., flow through cracks in a concrete basement floor or into an unlined sump). An earthen floor in a basement is

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considered soil “in the environment” and the exemption at 310 CMR 40.0317(19) would not apply in cases where a discharge greater than its Reportable Quantity is released to an earthen floor within the interior of a building. This type of release would require a 2-hour notification to DEP. Note that a “120 day” reporting obligation per 310 CMR 40.0315 may still exist if environmental releases less than the Reportable Quantity contaminate more than 2 contiguous cubic yards of soil at levels above a Reportable Concentration applicable at the site.

Q. 6. Is a spill of an oil or hazardous material into a containment structure designed for such purposes reportable?

A. Yes, if the total quantity of the oil or hazardous material that escapes from the containment structure to the environment equals or exceeds its Reportable Quantity within a consecutive period of 24 hours or less, or if the quantity is unknown but likely equals or exceeds its Reportable Quantity within a consecutive period of 24 hours or less (see 310 CMR 40.0311(1)-(4)). Note that the quantity released would include discharges to the ambient air. Where there is uncertainty as to whether the standard for notification has been met, parties may want to consider notifying DEP within the specified timeframe knowing that they may subsequently retract the notification within 60 days (310 CMR 40.0335). In cases where a 2-hour reporting obligation is not present, it is important to note that a 72-hour and/or 120-day reporting condition could still exist.

Q. 7. Is a spill of an oil or hazardous material into a storm drainage system reportable?

A. Under the provisions of 310 CMR 40.0311(8), a “2 hour” notification obligation exists for “any release of oil and/or hazardous material ..that is indirectly discharged to the environment by means of discharge to a stormwater drainage system”. In this context, reporting would be required for any release to a storm drain system (e.g., catch basin, piping) that: (i) is likely to be discharged to environmental media (e.g., underlying/surrounding soils, groundwater, surface water, ambient air) in an amount equal to or greater than the applicable Reportable Quantity within a period of 24 consecutive hours or less (310 CMR 40.0311(1) and (3)); or (ii) the quantity of the release is unknown, but the amount discharged to environmental media is likely to be equal to or greater than the applicable Reportable Quantity over a period of 24 consecutive hours or less (310 CMR 40.0311(2) and (4)); or (iii) is likely to result in the appearance of a sheen on surface water (310 CMR 40.0311(5)). Note that any release of oil or a hazardous material above its Reportable Quantity to the surface of the ground (including pavement) is considered a *direct* release to the environment that requires notification within 2 hours, *even if that discharge then flows into a nearby storm*

drain system. If a discharge to the surface of the ground above an RQ results in a subsequent discharge to a storm drain system above an RQ, then a second 2-hour notification obligation may also exist.

Q. 8. Does the 100-ppmV headspace criterion in 310 CMR 40.0313(2) for reporting releases associated with an underground storage tank closure assessment apply to ancillary piping associated with the storage tank?

A. Yes. The criterion articulated in 310 CMR 40.0313(2) applies to “underground storage tanks” as that term is defined at 310 CMR 40.0006. That definition includes “ancillary piping”.

Tier Classification and Response Action Deadlines

Q. 9. If a site is classified as default Tier ID because a deadline was missed, how does the party conducting response actions come back into compliance?

A. Parties conducting response actions at sites that default to a Tier ID status can come back into compliance by conducting the next required response action(s) that was not performed, resulting in the default status. For sites that default to Tier ID because of a failure to tier classify within 1 year of release notification, the next required response action is the submittal of an initial Tier Classification, and permit, if applicable. The PRP can also submit an RAO or a DPS to come back into compliance.

Response Action Outcomes

Q. 10. While performing due diligence on a parcel, it was determined that current groundwater conditions were inconsistent with an RAO that had been submitted by a previous owner. Contaminants of Concern identified in the RAO were recently found to exceed applicable cleanup standards that were in effect at the time the RAO was filed, whereas the RAO was based on Contaminants of Concern levels below No Significant Risk standards. Are there requirements to notify DEP in this case or to retract the RAO? What party is responsible for undertaking these actions?

A. In accordance with 310 CMR 40.0317(17), a party required to notify (see 40.0331) is required to report levels of oil or hazardous materials in excess of Reportable Concentrations at closed sites if such data would negate the RAO. This requirement also applies to other types of site closures described at 310 CMR 40.0317(17). Note that prospective buyers are not among the parties required to notify (unless and until they purchase the property and become a current land owner). With

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respect to retraction, only the party that files an RAO (or any other submittal) can retract it. The party that submitted the RAO should be informed of new knowledge that negates the RAO. The party that submitted the RAO should proceed to provide release notification and RAO retraction, as appropriate. Any other party required to report (310 CMR 40.0331) must also notify if and when they obtain this knowledge. Of course, anyone can inform DEP of this situation (even if they are not required to notify), so that the agency can respond as appropriate.

Fees

Q. 11. Would the Post-RAO Class C Annual Compliance Fees apply to sites where Class C RAOs (with no Active O&M) were filed before the fee regulation revisions became effective on June 27, 2003?

A. The change in the fee schedule effective June 27, 2003 subjects all sites that have achieved a Temporary Solution with the submittal of a Class C RAO Statement to an \$800 Post-RAO Class C Annual Compliance Assurance Fee (regardless of whether Active O&M is occurring), even if the RAO was filed before the changes became effective on June 27, 2003. There are no provisions in 310 CMR 4.00 to pro-rate, exclude, or "grandfather" such sites. This annual fee would only be billed for those sites for billable years ending on or after June 27, 2003.

Q. 12. Can I get a payment plan for any DEP fee?

A. Yes, in cases of severe financial hardship, a payment plan may be requested at the time the fee is payable. This includes one-time submittal fees (i.e., RAM, RAO or DPS) and fees that are invoiced (i.e., Tier I, Tier II, Phase V, Post-RAO Class C). Fee payment plan requests should be made in writing to DEP's Boston office, BWSC Cost Recovery, Fees & Revenue Section, One Winter Street, 7th Floor, Boston MA 02108. Payment plan schedules are typically on a monthly basis with up to one year with no finance charge.

Q. 13. Which fees are affected by the Homeowner Fee Rate changes effective on June 27, 2003?

A. A homeowner who is conducting response actions at his or her residence to address a release of oil and who meets the definition established in 310 CMR 4.02 qualifies for reduced Permit and Tier I and Tier II Annual Compliance Fees that are applicable on or after June 27, 2003. There are no Homeowner rates for the DPS, RAM or RAO fees. Qualifying homeowners must submit a certification using DEP form BWSC120 to realize the reduction in fees. Form BWSC 120 is available at <http://mass.gov/dep/bwsc/files/forms/trforms.htm>.

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Q. 14. If a homeowner is conducting response actions, but his/her insurance company is actually paying the "bills", can the homeowner complete form BWSC120 to reduce Tier I or Tier II annual compliance fees?

A. In general, if the homeowner is performing the response actions at the site as indicated by the homeowner signing the various submittals made to DEP (IRA, RAM, Phase I, RAO, etc.), and the same homeowner submits Form BWSC120, (the completed Homeowner Certification Transmittal Form) to DEP, then the homeowner qualifies for the lower "Homeowner" fee rates. This is true, even if the homeowner's insurer is paying the environmental consultant directly or reimbursing the homeowner.

Q. 15. Is there a way to confirm (via DEP records) the Annual Compliance Fees historically paid for a disposal site?

A. While cancelled check(s) serve as proof of payment for DEP fees, a PRP or the PRP's representative may contact the DEP Boston office to request information about what fees have been invoiced and whether additional fees remain to be invoiced for a particular RTN. The BWSC Cost Recovery, Fees & Revenue Section customer service telephone number is (617) 292-5545.

Q. 16. Is any fee due with a 5-year Class C RAO Periodic Evaluation Report (BWSC104)?

A. No. Periodic Evaluation of a site that has achieved a Temporary Solution with a Class C RAO Statement does not require submittal of a fee. The party that has filed the RAO and the Periodic Evaluation Report will be subject to the billing of an Annual Compliance Assurance Fee based on the annual status date for the site. The fee category would likely be Post-RAO Class C. This category has a fee rate of \$800 per year (effective June 27, 2003) as defined in the fee regulations, 310 CMR 4.00. Annual Compliance Assurance Fees for sites with a Class C RAO are invoiced by DEP.

Q. 17. Is there a fee associated with conducting a URAM?

A. No submittal fee is required to conduct a URAM.

Q. 18. Does the Annual Compliance Fee change when Phase V Activities are conducted at a site?

A. Yes. Upon receipt of form BWSC108 indicating that Phase IV activities have been completed and Phase V Operation, Maintenance or Monitoring is necessary (i.e., checking off box 12 (a) in Section B), the

site is in Phase V, and is subject to the lower Annual Compliance Fee. The Phase V fee category is applicable beginning with the billable year in which the Phase IV Completion Statement or Phase V Inspection and Maintenance Report is received, even if the submittal is made on the annual status date (i.e., the last day of the billable year).

Q. 19. Is there a location where a PRP can hand-deliver a compliance fee payment?

A. Yes. Hand delivery of a compliance fee payment may be made only at the DEP Boston Office located at One Winter Street (Downtown Crossing). Payments may be made by check or money order between 8:45 am and 5:00 pm at the DEP reception desk on the second floor. The escalator to the second floor is located near the Washington Street entrance. Staff at the main reception desk will log in receipt of the payment and, upon request, will provide a date-stamped photocopy of the check. The top portion of the invoice should be included with the payment if possible to ensure proper crediting.

If the payment is for a one-time RAM, RAO, or DPS submittal fee, the check should include a photocopy of the RAM, RAO, or DPS transmittal form showing the site information and RTN if one has been assigned. It is also helpful if the invoice number or Release Tracking Number and fee type are written on the face of the check.

Please note that payments made by mail should be sent to the following locations:

Fee Invoices:

Department of Environmental Protection
Commonwealth Master Lockbox
PO Box 3982
Boston, MA 02241-3982

One-time RAM, RAO, and DPS Compliance Fees and Permit

Application Fees:

Department of Environmental Protection
PO Box 4062
Boston, MA 02211-4062

Q. 20. Is it common practice that the Annual Compliance Assurance Fees are not billed annually but rather are billed after the site has been closed with an RAO and include fees spanning several years? I am conducting response actions at several sites where cleanup is ongoing and want to budget for fees that have not yet been billed.

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A. DEP does not intentionally wait until an RAO Statement is received before issuing a fee invoice. However, in some instances a fee invoice may be issued after an RAO is submitted and it may include more than one year of Annual Compliance Assurance Fees. This "back-billing" is a result of the volume of sites regulated under the MCP and the required review of database entries for each site to determine the applicable Status Date, fee category and rate, billable party, and mailing address.

Because Annual Compliance Fees are billed retrospectively, and fees are billable for each year, including the year that the RAO Statement is filed, the final fee invoice is often issued after receipt of the final RAO Statement. The fee category is based on the site classification on the annual status date. Thus, the last billable year (the year that the RAO is filed) is not "over" until the Annual Status Date.

Annual Compliance Assurance Fees should be budgeted for each billable year a site remains within the MCP system. If you want to budget for fees and need to know the amount, please contact the staff within the BWSC Cost Recovery, Fees & Revenue Section directly at (617) 292-5545 with the Release Tracking Numbers. You may also request to be invoiced at any time if the fees for a site(s) have not yet been invoiced.

Please refer to the following links on DEP's website for additional information on fees:

Link to DEP BWSC Fee & Cost Recovery Web-page:
<http://www.mass.gov/dep/bwsc/fees.htm>

Link to Summary of June 27, 2003 Fee Rate Changes:
<http://www.mass.gov/dep/bwsc/files/fees/mcpfee.htm>

Link to MCP Timelines & Fees fact-sheet (revised June 27, 2003):
<http://www.mass.gov/dep/bwsc/files/timelin.pdf>

Link Homeowner Certification Form:
<http://www.mass.gov/dep/bwsc/files/forms/pdfforms/bwsc-120.pdf>

Forms

Q. 21. Where are forms for AULs located on DEP's website?
Specifically, I am looking for 40.1074(1)(b) -AUL Opinion; 40.1074(1)(f) - Property Owner Certification Statement; and 40.1403(7)(b)- Public Notice of an AUL.

A. The AUL Opinion Form and the Property Owner Certification Statement are available at
<http://www.state.ma.us/dep/bwsc/files/forminfo.htm>. The public notice

form for an AUL can be found at <http://www.state.ma.us/dep/bwsc/files/pubnot.pdf>. The AUL Opinion Form (BWSC113A) is the transmittal form for the narrative AUL Opinion. The narrative AUL Opinion must be attached to Form BWSC113A (BWSC113A was formerly BWSC114) and recorded at the Registry. The AUL Transmittal Form (BWSC113) provides for the property owner certification statement. Form BWSC113 is the transmittal form for sending the registry certified copy of the AUL to DEP. The registry-certified copy would include Form BWSC113A.

Q. 22. Section 310 CMR 40.1074(1)(e) requires notice to current record interest holders in the subject area 45 days before recording/registering an AUL. Is there a form for that notice?

A. No. There is no specific DEP form to provide notice to current record interest holders. The MCP is fairly specific about what information should be given to record-interest holders and how it should be sent. It requires the party to send a certified letter/return receipt requested to all interest holders on record. The letter should contain the following information: a statement that there is contamination on the site (specify type, and although not required by the regulations, it would be useful to describe the source/incident that resulted in contamination); a description of where the contamination is located (one could use the AUL survey plan for this purpose); and the terms of the Notice of AUL (that would be the list of uses and activities in the area subject to the AUL that are consistent and inconsistent with the AUL Opinion and obligations for maintaining the AUL).

310 CMR 40.1074(f) requires that the party signing the AUL certify "on a form prescribed by the Department" that he/she did indeed notify record interest holders as required by 310 CMR 40.1074(e). DEP has updated the AUL Transmittal Form (BWSC113) to include a check box to indicate whether record interest holders have been notified or if there were none. See <http://www.state.ma.us/dep/bwsc/news.htm> and/or <http://www.state.ma.us/dep/bwsc/files/forminfo.htm>.

Q. 23. What is the process for LSPs who wish to register online for the purpose of providing MCP submittals to DEP electronically?

A. It is easy to register to file DEP submittals online. Initial registration generally takes less than 15 minutes. Go to www.mass.gov/dep and click on the eDEP icon on the navigation bar on the left side of the page. On the eDEP homepage, click on the New User icon. Answer the questions in "Next Steps" to establish an account and user type.

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A security feature of the registration process requires that LSPs submit a proof of identity. This involves printing, signing, and stamping a registration form, and returning it by U.S. mail to DEP. This proof of identity is necessary to ensure that the person submitting the DEP form is, in fact, the person claiming that identity.

During the period in which proofs of identity are being processed, LSPs will be able to fill out and validate forms in eDEP, but they will not be able to sign and submit those forms that require proof of identity. DEP will send an email (usually within a few days) to confirm that the proof of identity has been completed. Thereafter, LSPs will be able to sign and submit new filings as well as any works in progress (saved online) during the confirmation process.

Q. 24. How does the PRP sign the online submittal?

A. eDEP allows users to share submittals with other registered eDEP users (PRPs) for the purposes of viewing, editing, and/or signing a submittal. All individuals, including PRPs, who need to access DEP's electronic submittals must be registered in eDEP. As part of the registration process each user creates an eDEP "Public Alias". It is the "Public Alias" information that eDEP users, for example LSPs, provide in the "Share this Submittal" section in eDEP that then allows their clients and/or others access to the submittal to review, edit and/or sign.

Q. 25. What are the advantages to online submittals over the traditional paper methods?

A. There are numerous benefits for the user from electronic submittals including:

- ease of filling out the submittal;
- electronic storage of submittals (no more lost forms!);
- accuracy of data and faster turn-around times;
- online validation, including an administrative completeness check, thus avoiding time-consuming corrections;
- ability to save a work in progress for completion at a later date;
- automatic entry of many of the fields of the submittal/form from data already existing in DEP databases, eliminating the need to enter it again;
- ability to access submittals to view, edit, and/or sign from any internet connection; and
- if filed on-time, an additional one-week grace period beyond what is provided for non-electronic submittals, for the submittal of the hardcopy to DEP.

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